IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.90 OF 2004

Crimson Property Pvt. Ltd. ... Petitioner.

vs.

Acnielsen Org-Marg Pvt. Ltd. .... Respondent.

Mr.Pradeep Sancheti with Mr.S.Deshmukh i/b. M/s.Thakordas & Madgavkar, for Petitioner.

Mr. C.S.Balsara i/b. Ms.R.S.Parimal, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 23rd January, 2006

P.C.:-

1. By this petition, the petitioner challenges the Award made by the sole Arbitrator dated 3.12.2003 directing the petitioner to pay certain amount to the respondent. The learned Counsel appearing for the petitioner submits that in paragraph 1 of the Award the learned Arbitrator has held that it is an admitted position that at the end of April,2002 the balance deposit with the petitioner was Rs.32,05,129/-, and on the basis of this position the learned Arbitrator has worked out

the entitlement of the respondent to receive the amount. The learned Counsel submits that this basic finding that it is an admitted position that by the end of April,2002 an amount of Rs.32,05,129/- was balance, is factually wrong, there is no admission given by the petitioner at any time. The learned Counsel submits that during the hearing of this petition, the learned counsel appearing for the respondent relied on the letter at page no.165 of the petition and the statement of accounts at page 156 of the petition to contend that the petitioner admitted that by end of April,2002 an amount of Rs.32,05,129/- was in balance. The learned Counsel submits that perusal of letter at Annexture 18 at page no.155 of paper book shows that the petitioner admitted that as on 31.3.2001 the balance amount was Rs.47,00,000/- (Rupees Forty Seven lakhs only). So far as the statement of account which is at page 156 i.e. Annexture 19 is concerned, it is not accepted by the petitioner. In any case the document itself does not show that the balance shown in the statement of account is admitted by the petitioner. The learned Counsel therefore submits that thus the basic foundation of the Award is non-existant and therefore, the Award is liable to be set aside.

2. The learned Counsel appearing for respondent on the other hand submits that apart from relying on admission that the amount of Rs.32,05,129/- was in balance, the learned Arbitrator has also done his own calculation which are to be found in paragraph 20 of

the Award, for issuing direction against the petitioner for payment of the amount. According to the learned Counsel thus, the Award is based on the material on record and therefore, it does not deserve to be disturbed.

3. Now perusal of the Award shows that in paragraph no.1 the learned Arbitrator has observed thus:-

> "It is an admitted position that as at the end of April,2002 the balance deposit was Rs.32,05,129/- ."

The learned Counsel for Respondent relies on a letter dated 17.5.2001 at Annexture 18 of the Paper book to claim that such an admission is to be found in that letter. Perusal of that letter shows that the respondent had addressed a letter to the petitioner wherein he has stated thus:-

> "Your account in our books show a sum of Rs.47,00,000/- (Rupees Forty Seven lakhs only) as payable to us at the end of 31.3.2001. Kindly confirm the balance and return the original of this form with your signature affixing rubber stamp of your concern. Break-up of the balance is given hereunder/overleaf."

The petitioner confirms the position as under:-

> "This is to confirm that our books as on 31.3.2001 show a balance of Rs.47,00,000/- (Rupees Forty Seven lacs only) due to you."

It is thus clear that the document at Annexure 18 does not show that the petitioner admitted that as on 28.4.2002 an amount of Rs.32,05,129/- was due. So far as the document at Annexure 19 on which reliance is placed by the respondent is concerned, it does show the amount of Rs.32,05,129/-. But the document itself does not show that this position was accepted or admitted by the petitioner. The learned Counsel appearing for respondent has not been able to show any other document on record which will show that the petitioner has admitted that in the month of April,2002 the balance deposit was Rs.32,05,129/-. Perusal of paragraph 20 of the Award shows that the learned Arbitrator takes the amount of Rs.32,05,129/- as the amount in balance and Rs.6,08,974.51 as interest on the said amount. The entire discussion regarding refund of this amount is to be found in paragraph 19 of the Award wherein the learned Arbitrator has observed thus:-

> "This is for refund of the deposit of Rs.32,05,129/- as on the date of 30th April,2002. They claim this amount together with interest

> thereon at the rate of 18% p.a till the date of refund of the deposit. I find no answer to this claim, from the claimants. They have to refund the deposit. Since they did not offer to refund as on 1st May,2002, I would grant interest on the said amount at the rate of 12% p.a. from the 1st May,2002 till 30th November,2003."

It is thus clear that the learned Arbitrator has awarded the claim merely because he found that there is no answer to the claim. Perusal of the provisions of Section 25 of the Act shows that merely because the claim made is not denied the Arbitrator cannot treat the absence of denial as an admission. The learned Arbitrator has to make an inquiry to find out whether the claimant has made out a claim or not. It is thus clear that the findings of the learned Arbitrator that the amount of Rs.32,05,129/- was due as on 30th April,2002 is firstly on an admission which is not the admission, and secondly due to absence of answer to the claim made by the respondent. Therefore, looking from any point of view the finding recorded by the learned Arbitrator is contrary to the Law and could not have been recorded by the learned Arbitrator. Further, perusal of letter dated 28.5.2002 at "Exhibit H" to the petition shows that as on 30th April,2002 according to the account books of the

respondent the amount due from the petitioner was shown as Rs.8,30,129/-. It is thus clear that so far as this date i.e. 30.4.2002 is concerned, the respondent had made two types of claim viz. the claim of amount of Rs.32,05,129/-, as also the claim of amount of Rs.8,30,129/-. In the absence of any admission from the petitioner, the learned Arbitrator was under a duty to hold inquiry to find out whether the respondent had established his entitlement to the amount of Rs.32,05,129/- . I thus find that the Award made by the learned Arbitrator is contrary to the material available on record and the findings are not capable of being recorded on the basis of the material on record, and therefore, the Award is invalid and liable to be set aside. In the result therefore, the petition succeeds and is allowed. The Award impugned in the petition is set aside. The respondent is directed to pay cost of this petition to the petitioner as incurred by the petitioner.